Mr. Krishnaswamy Rao continued :—I have one more amendment to propose viz., that the following be substituted for section 4 and that the first three paras in Schedule No. III and the words "Provided that" in the last para be omitted.

"No person shall shoot game within the limits described in Schedule No. I unless he shall have obtained a license from a First Class Magistrate.

Any person who wishes to obtain a license shall apply in writing.

The application shall specify the name, occupation and place of residence of the person in whose name the license is to be issued.

On the application being granted, the applicant shall pay a fee of Rs. 10.

The license shall be in the form prescribed in Schedule III.

The First Class Magistrate may, if he considers there is any good reason (to be recorded by him in writing), refuse to grant a license. Such refusal shall be subject to revision by the Dewan. The holder of a license shall, if requested by any person named in section 5 of this Regulation, produce the same for inspection.

No license shall be granted for shooting a female or immature male of the bison (Bos gaurus) and the ibex (Hemitragus hylocrius)."

The object of this amendment is simple. The proper place for the conditions under which the licenses are to be issued is the body of the Regulation—not the Schedule. Further, great difficulty is often experienced in getting a refund of the fee paid along with the application in cases where the license is refused. The proposed amendment renders quite clear when the payment should be made i. e. when the license is granted, thus obviating the inconvenience.

Seconded by Mr. Thanu Pillai.

Carried.

President : Now the great question is about the discretion to be used in granting authority to private persons under section 5. This, I confess, will be no easy work to Government especially as their discrimination in the matter appears to be the only safe-guard against the possible abuse of the power. The Committee seem to lay much stress upon the necessity for such extra aid.

Mr. Thanu Pillai : This aspect of the question did not escape us in the Select Committee and I am free to admit that one of the reasons which weighed with us in finally adopting the provisions was the fact that Government would give the power only to those in whom they would have confidence.

Mr. Krishnaswamy Rao : But once the power is given there is the danger of invidious distinctions. It might often be embarrassing.

After some further discussion it was resolved that the Bill be read again on a future day of which notice shall be given.

IRRIGATION BILL.

Mr. Thanu Pillai said :—

I beg to move that the Report of the Select Committee on the Irrigation Bill which I presented at the last meeting be taken into consideration. I would make a few observations on the Bill. In the first place I wish to point out that the Bill is, in the main, an enabling measure. In view of the widely differing conditions, in respect of the nature of the irrigation works, the manner of their execution and up-keep, the mode of regulating the water-supply and generally, the rights and obligations of the ryots, it has been deemed expedient to embody in the Bill only certain general principles and to take the necessary legal power to regulate details by rules and executive orders. It may also be remarked that the proposed measure does not trench on any vested rights or interests, but seeks chiefly to consolidate and give legal sanction to practices which are or have been in vogue.

The Bill classifies irrigation works into 'major,' 'minor' and 'petty' according as the area served by them exceeds 200 acres, is between 5 and 200 acres, and up to 5 acres respectively. The importance of the classification lies in the difference in responsibility in the matter of the construction, repair and maintenance of the works under each group. The Bill throws on the Government the entire responsibility of executing and maintaining all major works, and leaves to the proprietors

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of the lands concerned the obligation of attending to all petty works. In regard to minor works the existing practice is conformed to; in other words, Government would continue to carry out these works at their cost in parts of the country where according to immemorial usage they have been hitherto doing so; while in other parts the works will devolve on the ryots concerned, Government assisting the ryots with such grants as may, in reference to the merits of each case, be deemed fit. The maintenance of the minor works—that is keeping them at the level of efficiency at which they were when they were constructed or completely restored,—devolves in all cases upon the ryots interested. This is no innovation. There was a well-recognised rule that it was the duty of the ryots to periodically remove silt and do such other work as may be necessary to keep the tanks, channels &c. in good order. But what with the gradual decadence of the spirit of mutual dependence which formerly characterized the rural population and the neglect on the part of the local officials to enforce the obligation, the rule has fallen into desuetude; and the result is the sad spectacle of wilful neglect which many tanks and channels, on which large sums of public money have been expended, present.

The provision in regard to the petty irrigation works may appear to be an infringement of the right which the people in South Travancore now enjoy of having *all* their irrigation works done *entirely* by Government. I admit that in theory the duty of attending to *all* works devolves on Government, but practically the operations of the Irrigation Department have been confined to the more important works. The inexpediency of dribbling away the annual allotment in tens and fifteens on petty works hardly needs demonstration. Provision, however, has been made to deal with individual petty works exceptionally when the circumstances justify such a course.

Having classified the works and fixed the responsibility of the Government and the ryots respectively in regard to their execution and maintenance, the Bill provides for the intervention of the State in matters in which the ryots will not or cannot combine to protect their own interests or discharge their obligations. A few listless, apathetic, self-seeking ryots who are unable or unwilling to look beyond the demands of to-day may make it impossible for the rest, however energetic and far-sighted, to combine and carry out works for their common benefit; and the Bill contains the necessary provisions for compelling the recalcitrant minority to contribute towards the common object. Sections 6, 10, 11, 14 and 25 have been framed with this object. It will be noted that sufficient safe-guards have been provided in these sections against undue or unnecessary interference with individuals; and from certain memorials received by the Council it is satisfactory to find that some ryots appreciate these apparently compulsory provisions. I would particularly refer to the very sensible petition received from a rich Brahmin ryot of Munkombu. The petitioner, while heartily recognising the importance of the provision contained in section 25 which applies specially to Kuttanad, apprehends that it is not sufficiently comprehensive. He points out that the Division Peishcar, who is the authority empowered to pass orders under the section, will not be able to promptly deal with the matters contemplated in the section and suggests that the power should be vested in the Tahsildar or other officer on the spot. I have to explain that under section 4 Government may invest any local officer drawing not less than fifty Rupees a month with the power under section 25 so that no modification of the latter section is called for.

The Bill next makes provision for the acquisition of land in cases where private individuals wish to construct or extend irrigation works.

Sections 26, 27 and 28 deal with the question of procuring labor on certain emergent occasions. One or two petitions have been received objecting to these sections. One of my friends in the Council also thinks that these sections involve an unnecessary interference with private rights. He says that "impressment of labor is unknown to Travancore" and that "labor is available in abundance in the country." The above provision would thus appear to be at once inexpedient and unnecessary. Without stopping to examine these propositions or to allude to the academical or *a priori* objection on the score of interference with private rights—all the leading provisions of the Bill (may I add the whole course of modern legislation) being at variance with the strict *laissez faire* doctrine—I would point out that the limitations contained in the sections are such as would obviate all possible hardship. It is only on extraordinary occasions of great emergency that the section

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will have to be put into motion. *Then* it is only the able-bodied male persons of the labouring classes that could be called upon to contribute their labour. The men are to be paid by day at the highest rate paid in the neighbourhood for similar work, and double such rate if they are required to work at night. I fail to see that any man who lives by manual labour can reasonably complain of a provision which may require him once in the way, probably not oftener than once in ten years, to work for a day or a night in order to prevent a great calamity and receive the highest wages he could get for his work elsewhere. I may add that the Forced Labour Act of Madras, from which the above provisions have been borrowed, has been in force all these years and has not been shown to have worked any practical hardship.

The Bill finally deals with certain offences. It will be noted that the punishment provided is very light being a maximum fine of Rs. 50 or maximum imprisonment for one month. Section 31 empowers persons in charge of irrigation works to arrest persons who in their view commit certain acts. It is a question whether it is safe to entrust this class of public servants with such powers. In view of the large interests at stake, it is of the utmost importance that the irrigation servants should have power to prevent wilful damage to irrigation works or any tampering with the water-supply. The proper regulation of the water-supply, especially in time of drought, is extremely difficult; and considering the strong temptation on the part of the ryots to improperly interfere and the serious consequences of such interference, the investing of the servants in question with the power is, to my mind, the lesser of two evils.

I have now briefly touched on the leading features of the Bill and I beg that it be taken up for consideration by the Council.

Seconded by Mr. Ramanatha Rao.

Carried.

Mr. Muthunayagom Pillai :—I have a few amendments to suggest, but I haven't given notice of them. If the President can allow me, I will at once propose them. Permission was granted and he said :—

Section 26. I entertain some doubts as to the advisability of investing such a low-paid village-official as the Proverthicar with the power under section 26 of calling upon people to work or furnish labour. I am afraid the power is apt to be abused. If the Council, however, should be of a different opinion, I would suggest that all requisitions made by Proverthicars under section 26 should be required to be made in writing and duly served on the persons concerned, and such written requisitions alone should be considered valid under the law.

The motion was lost for want of a seconder.

Mr. Muthunayagom Pillai resumed :—

Section 30 Clause 6. The failing to furnish labourers is made penal under this section. Obviously such failing can arise only on the part of the proprietors or employers of labour. Turning, however, to the section (26) which deals with the power to requisition labour, officers are empowered to call upon the *labouring* classes alone to co-operate in the work, and not upon the masters of these labourers. So, there being no duty imposed by section 26, no punitive provisions could be made for the breach of the duty. This is apparently an oversight and may be easily rectified. But I do not urge the rectification; for I am opposed to the impositions of any liability under section 26 on the employers of labour. I fully agree with my learned friend, Mr. Nagamiah, in the reasons he has given for thinking that no such "new engine of oppression should be forged by us." I may add that the Courts will find it no easy task to determine who is really able to furnish labour and who is not. Further, as pointed out by the memorialists from Nanjinad, slavery having been abolished, the serfs are more or less independent of their whilom masters, and landlords are no longer in a position to command the services of their tenants and watchers; and under such circumstances it is hardly fair to cast upon them the rather indefinite and vague liability of "furnishing labour." The officers empowered under the section, might as well be left to call upon the labourers directly themselves, and a provision punishing the labourer who fails to furnish his labour, would, I believe, amply meet the requirements in all cases. I would therefore propose the omission of the words "to furnish labourers or" and the words "labourers or" in the 2nd line in clause 6 of section 30.

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Seconded by Mr. Prince.

Mr. Thanu Pillai: It is a mere mistake in drafting and the amendment may well be accepted.

Carried.

Further consideration of the Bill was adjourned to the next ordinary meeting.

HINDU WILLS BILL.

In introducing the Bill, Mr. Muthunayagom Pillai said:—

The object of this Bill is to confer the power of testamentary disposition of property on certain classes of the people of this country who do not at present possess that power; to recognise the power with regard to certain other classes who already possess it; and to regulate the exercise of the privilege, with reference to them all, by the imposition of certain restrictions and the enactment of certain rules.

The Hindus of Travancore who are the followers of the Makkathayam law of inheritance conduct themselves very much like their fellow-castemen in the neighbouring British territories; and among the several usages that are common to them, the practice of disposing of property by Will, which has prevailed in British India for above half a century, has to a certain extent prevailed here too and instances of such dispositions have not unfrequently come before our Courts. In the year 1065, however, in a case coming from Shencottah, the competency of Hindus to make Wills was for the first time questioned and our High Court ruled that Hindus in Travancore were not competent to make valid dispositions of property by Will (vide T. L. R. Volume VI p. 146). It is needless, for our present purpose, to stop to consider how far Hindu Law and usage warrant the conclusion arrived at by the majority of the learned Judges of the High Court.

All that we need enquire is, whether the exercise of the power of testation would be productive of good to society in this country and whether the legislature should not come to the aid of the Hindus of this country who have been declared by the Courts not to possess the privilege under the law as it stands. That in British India the power in question has been productive of immense good, is the opinion of several eminent men, among whom I may refer to Mr. W. Stokes, who says that it cannot be questioned that the exercise of the power has produced in India, the same beneficial effects which it has produced in England and elsewhere, by stimulating the circulation of property and quickening the stagnation of society. If the system has worked so well there, we may naturally expect similar results here, and it seems to me that no time should be lost in placing the Makkathayam Hindus of Travancore on a footing of equality with their kinsmen in British India, on a matter of such vital consequence.

Turning next to the case of the followers of the Marumakkathayam law of inheritance, the authorities are not quite agreed as to whether at present, they have the power of disposing of property by Will. Dr. Ormsby in his "Outlines of Marumakkathayam Law" says: "The power of disposing by Will of self-acquired property is not recognised in the case of Malayalees by the law of Travancore." There are no cases quoted by him in support of this assertion; and there are no cases on the subject, as far as I am aware, in any of the published reports of Travancore decisions. The law in the Madras Presidency seems to be yet unsettled. In a Malabar case, *Alami* v. *Komu* (I. L. R. 12 Madras p. 126), it was held that the last surviving member of a Malabar Tarwad can make a valid testamentary disposition of the Tarwad property. In *Mannen* v. *Kelappan* (S. A. 534 of 1878 I. M. L. R. p. 25) it was ruled that self-acquisitions undisposed of during the life-time of the testator will not pass under Will. The soundness of this latter decision seems to have been doubted in the later case of *Kuttyasan* v. *Mayan* (I. L. R. 14 Madras p. 495). The Bill recently introduced in the Legislative Council of Madras to declare the testamentary powers of persons governed by the Marumakkathayam law of inheritance opens with the following preamble:—"Whereas doubts have arisen regarding the power of persons governed by the Marumakkathayam or the Alyasantana Law of inheritance to dispose of their separate or self-acquired property by Will; and whereas it is expedient to remove such doubts, it is hereby enacted &c." And the Bill does not purport to *confer* the privilege of testation, but is merely declaratory in form.

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